

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Southern District of New York



Rousseau B. V.
Plaintiff
v.
Probactive Biotech, Inc. d/b/a St. Paul Brands
Defendant

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Civil Action No. 18-cv-11058(CM)

WAIVER OF THE SERVICE OF SUMMONS

To: Ned W. Branthover
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 11/29/2018, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 11/29/2018

Probactive Biotech, Inc. d/b/a St. Paul Brands
Printed name of party waiving service of summons



Signature of the attorney or unrepresented party

Matthew A. Newboles
Printed name
Stetina Brunda Garred & Brucker
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
Address

mnewboles@stetinalaw.com
E-mail address

(949) 855-1246
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **December 20, 2018**, the attached **WAIVER OF THE SERVICE OF SUMMONS** was served on all interested parties in this action by email and U.S. Mail, postage prepaid, at the address as follows:

Ned W. Branthover
Abelman, Frayne & Scwab
666 Third Ave.
New York, NY 10017
nwbranthover@lawabel.com

and

Jeffrey E. Jacobson
The Jacobson Firm, P.C., Attorneys
347 Fifth Avenue, Eighth Floor
New York, NY 10016
jeffrey@jacobsonfirm.com

Executed on **December 20, 2018** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

/Renee Lau/
Renee Lau